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UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

United States of America,)	
Plaintiff,)	
)	
)	
vs.)	Case No. 14cr40023-TSH
)	
)	
Jonathan Tufts-Raymond,)	
Defendant.)	

BEFORE: The Honorable Timothy S. Hillman

Sentencing

United States District Court
Courtroom No. 2
595 Main Street
Worcester, Massachusetts
December 10, 2014

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United States District Court
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P R O C E E D I N G S

(The following proceedings were held in open court before the Honorable Timothy S. Hillman, United States District Judge, United States District Court, District of Massachusetts, at the Donohue Federal Building & United States Courthouse, 595 Main Street, Worcester, Massachusetts, on December 10, 2014.)

THE CLERK: All rise.

Court is now open. You may be seated.

Case No. 14-40023, United States versus Jonathan Tufts-Raymond.

Counsel, please note your appearance for the record.

MR. GRADY: Good afternoon, your Honor. Mark Grady on behalf of the United States.

THE COURT: Good afternoon, Mr. Grady.

MR. MIRHASHEM: Good afternoon, your Honor. Behzad Mirhashem for Mr. Tufts-Raymond.

THE COURT: Good afternoon, Mr. Mirhashem. And good afternoon, Mr. Tufts-Raymond.

THE DEFENDANT: Good afternoon.

THE COURT: All right. So just to set the table, we are here for Mr. Tufts-Raymond -- Mr. Tufts-Raymond's sentencing -- Tufts-Raymond sentencing, and in preparation for that, I have read Ms. Roberts' as-always-excellent presentence report that was authored on November 5th and then revised on December 3rd.

1 In addition, I have received and read excellent
2 sentencing memoranda from both the government and the
3 defendant.

4 I'm unaware -- and they have attached materials to
5 each. I am unaware of any other materials, but I want to
6 confirm the same with counsel.

7 Mr. Grady, are you aware of any additional
8 information?

9 MR. GRADY: There -- there are no additional materials
10 submitted. The government may allude to in its argument some
11 additional surveillance photographs or videos that are not
12 contained within the sentencing memorandum, but it would be
13 within the universe of materials described.

14 THE COURT: Mr. Mirhashem?

15 MR. MIRHASHEM: Nothing else.

16 THE COURT: Anything else that you're aware of?

17 MR. MIRHASHEM: No, your Honor. I assume that you
18 have the four separate sets of attachments that the sentencing
19 memoranda had, the letters of support from treatment providers,
20 the letters of support from family members, and then there was
21 a photograph and a certificate.

22 THE COURT: Yes, I have all of that.

23 MR. MIRHASHEM: Thank you.

24 THE COURT: And I've read all of it.

25 Okay. Mr. Mirhashem, have you had an enough

1 opportunity to review the presentence report, and more
2 importantly, to go through it with Mr. Tufts-Raymond?

3 MR. MIRHASHEM: Yes, your Honor.

4 THE COURT: Mr. Tufts-Raymond, do you feel that you
5 have had enough time to digest the -- the presentence report,
6 and do you feel like you are prepared to move forward?

7 THE DEFENDANT: Yes, your Honor, I do.

8 THE COURT: All right. Thank you. You can be seated.

9 And, Mr. Mirhashem, I intend to hear from you fully,
10 but with respect to the PSR, are there any objections to the
11 factual contents that are not otherwise noted in the addendum?

12 MR. MIRHASHEM: No, your Honor.

13 THE COURT: And, Mr. Grady, the same question to you.

14 MR. GRADY: No objections, your Honor. The
15 government, I think, has reconsidered one of its positions on
16 which it sort of successfully prevailed with Probation as to
17 one count, but I'll address that in the context of I think the
18 firearm enhancement discussion.

19 THE COURT: All right. So let me do this. Just to
20 continue to set the table so we can arrive at the -- the total
21 offense level, I'm going to just go through these on the
22 record, and then I know that we have a dispute on the --
23 whether or not the weapon was brandished or otherwise used, but
24 let me just set it out insofar as Ms. Roberts has, and then we
25 can go from there.

1 So with respect to Counts One and Seven, we show a
2 base offense level of 20, with an increase of five levels, a
3 specific offense characteristic increase of five levels,
4 because the firearm was brandished for an adjusted offense
5 level subtotal of 25.

6 On Counts Two, Three, Four, and Five, interference
7 with commerce by robbery, we show a base offense level of 20
8 and a specific offense characteristic increase of six levels,
9 because the firearm was otherwise used, for an adjusted offense
10 level subtotal of 26.

11 On Count Six, the armed bank robbery count, that too
12 shows a base offense level of 20, with an increase of two
13 levels for the -- to account for the specific offense
14 characteristic that the property of a financial institution was
15 taken, and that shows an adjusted offense level subtotal of 22.

16 And then finally, on Count Eight, we show a base
17 offense level of 20, specific offense level characteristic
18 of -- increase of two because the property of a financial
19 institution was taken, and the contested issue of whether the
20 firearm was otherwise used or brandished, which would make the
21 specific offense level either five, if it was brandished, or
22 six, if it was otherwise used. As it stands right now, it is
23 an adjusted offense level of 28.

24 So the -- the multiple-count adjustment would show a
25 total number of units of 7.5. The greater of the adjusted

1 offense level is 28 at the moment. An increase in offense
2 level of five and a combined adjusted offense level of 33, and
3 from that there's an acceptance of responsibility deduction of
4 two levels.

5 And I understand there's a third-level motion from the
6 government?

7 MR. GRADY: Yes, your Honor. The government would so
8 move at this time.

9 THE COURT: All right. If those calculations don't
10 make your head hurt something's not right.

11 All right. Let me hear -- Mr. Mirhashem, this was --
12 let me start with you because you're the one who -- who raised
13 this.

14 MR. MIRHASHEM: Okay. So the issue, as your Honor is
15 aware, is this distinction between brandishing and otherwise
16 used, and it only matters as to Count Eight because the highest
17 offense level drives the total offense level. So my argument
18 is focused on that.

19 Basically, the government says it's otherwise used if
20 you physically -- if you threaten a specific person, and if
21 they're right about that, any time you threaten a specific
22 person it's otherwise used then the government prevails on this
23 argument. And I just want to explain why specific in this
24 context, whatever it means, and I think it's hard to understand
25 clearly what it means, can't just mean a specific person. And

1 to appreciate that I would suggest that here you have the Court
2 of Appeals interpreting a particular guideline provision in the
3 context of particular facts so you should start with the
4 language of the guideline itself. And so I want to start with
5 the language of brandishing and otherwise used. And
6 brandishing is in Check 1B1.1 subsection (C) --

7 THE COURT: Section 1. -- slow down. Which?

8 MR. MIRHASHEM: 1B1.1.

9 THE COURT: Yeah.

10 MR. MIRHASHEM: And then subsection (C).

11 THE COURT: 1B.

12 MR. MIRHASHEM: Unless I -- did I copy it wrong?

13 THE COURT: 1B.1.1?

14 MS. ROBERTS: Your Honor, it's on page 17, subsection
15 (C).

16 THE COURT: Yeah. Got it. Thank you.

17 MR. MIRHASHEM: So the part of the -- I'm just going
18 to read the part of the definition that matters in this case:
19 "Brandished" with reference to a firearm means that all or part
20 of the weapon was displayed in order to intimidate another
21 person. That's all in there. If you use a firearm, display
22 it, intimidate another person, that's brandishing.

23 I mean whatever the Court of Appeals has said, it
24 surely did not intend to say the guideline doesn't say what it
25 means. So use a firearm to -- I shouldn't use the use -- if

1 you display a firearm in order to intimidate another person
2 that's brandishing.

3 Now, "otherwise used." So what does "otherwise used"
4 mean? I think that to -- you have to -- the first thing I
5 always wonder about this odd phrase is otherwise -- other than
6 what? And so you have to go to the guideline in which this is
7 used. For example, the robbery guideline. If you look in the
8 robbery guideline, you see that the greatest number of points
9 is assigned for actually discharging the firearm. The next is
10 otherwise used. Then it's brandishing. So it's to use it
11 other than by discharging it. So it's very close to discharge.
12 And then the language there is "to otherwise use a firearm."
13 It's in the same set of definitions basically. It means
14 conduct did not amount to discharge but was more than
15 brandishing. So this is where it gets difficult. You know,
16 brandishing is precisely defined, and then if it's more than
17 that, but not discharged, it's otherwise used.

18 THE COURT: So in the photograph, even though -- I
19 mean it's admittedly resting on the counter.

20 MR. MIRHASHEM: Right.

21 THE COURT: It's clearly aimed at the teller --

22 MR. MIRHASHEM: And so --

23 THE COURT: -- and the barrel is pointing right at
24 her.

25 MR. MIRHASHEM: I -- I agree with the barrel is

1 pointing at her, and that doesn't settle the question of is
2 that displaying it in order to intimidate the teller. That's
3 brandishing. Or is it more than that? And that's where I
4 think you have to look at the language that the Court of
5 Appeals uses in the context of those cases.

6 So in the *LaFortune* case, and that is why I quoted
7 extensively from it. In this case, and I'm quoting directly,
8 "*LaFortune* contends that his waving and pointing of the silver
9 revolver at bank tellers and customers, together with his
10 instructions that persons in the bank get down, without an
11 explicit threat to any person constitutes brandishing." So
12 that's his position.

13 The government contends that when *LaFortune* pointed a
14 cocked gun at the head of the female teller, held the gun in
15 his hand while shoving the customer to the floor, ordering by
16 yelling at her to get down, don't talk, and aiming the weapon
17 directly at another bank employee while giving orders, it
18 constituted an otherwise use. This is a far cry from just
19 pointing the firearm while it's resting as in that picture.

20 And so then the Court goes on to say, As we -- "As we
21 view it, a person may brandish a weapon to advise those
22 concerned that he possesses the general ability to do
23 violence." It's not general as opposed to a number of people
24 versus specific one person.

25 THE COURT: You know, I have to just parenthetically

1 say that is so politely phased -- I mean phrased to a moment
2 that must have been extremely terrorizing for whoever is on the
3 receiving end of it.

4 MR. MIRHASHEM: Well, your Honor --

5 THE COURT: I'll give him credit for wordsmanship.

6 MR. MIRHASHEM: You know, I can't -- when I'm reading
7 it --

8 THE COURT: I know that.

9 MR. MIRHASHEM: There's a quote, "advises" in quotes.
10 You know, the Court is using "advise" in quotes.

11 So a general or even pompous showing of weapons
12 involving what one -- what one would consider an arrogant
13 demonstration of their presence constitutes the generalized
14 warning that these weapons may be in the future used and not
15 merely brandished.

16 Altering this general display of weaponry by
17 specifically leveling a cocked firearm at the head or body of
18 the bank teller, or customer, ordering them to move or be quiet
19 according to one's direction is a cessation of "brandishing"
20 and the commencement of "otherwise used." Commencement of it.
21 The "otherwise used" begins when you specifically level a
22 cocked firearm at the head of a teller and then tell people to
23 move and otherwise be quiet. They call that the commencement.

24 And then if you look at the *Villar* case, these are the
25 facts of that case: A teller was returning from her lunch

1 break when a man wearing a hooded sweatshirt and ski mask
2 jumped over the chain-link fence, stuck something against her
3 side, and told her to get inside the bank. The man had a
4 Hispanic accent. He told the teller to remain quiet and no one
5 would get hurt. Eventually, the teller saw the man was holding
6 a gun. Once inside the bank, the teller saw her assailant was
7 not alone. Another man who was white was asking tellers to put
8 money inside a bag. The Hispanic robber holding the gun
9 pointed it at another teller, who was hiding underneath her
10 desk, and told her to stand in the middle of the bank lobby.
11 Later he told the two tellers to get down on their knees before
12 both men fled the bank.

13 And in this context, the Court says this specific use
14 of the weapon can make an unmistakably clear and specific
15 threat falls within the definition of otherwise used. So the
16 test is not are you generally pointing at a bunch of people, or
17 pointing at a specific person. That argument is flatly and
18 consistent with the text of the guidelines. It's whether you
19 specifically use the firearm to make a specific threat that not
20 only you better give me this money, or there's this generalized
21 concern about violence, but right here and now you may get
22 shot. You stick it in their side, you put it to their head,
23 and I'm not saying the Court doesn't say you have to stick it
24 in their side or put it to their head. Obviously, there's a
25 definition that applies to a number of fact patterns, but it

1 has got to be more than brandishing, and these examples they
2 said are the commencement of use other than by discharge. And
3 that's why this case where you have the gun resting on the
4 counter does not rise to the level of otherwise used.

5 THE COURT: Thank you.

6 MR. MIRHASHEM: Thank you.

7 THE COURT: I may loop back to you.

8 Let me hear from Mr. Grady. I think I'll give you --
9 just give me one second.

10 MR. GRADY: Sure.

11 (Pause.)

12 THE COURT: Okay. Go ahead.

13 MR. GRADY: I think I would simplify things a great
14 deal, your Honor. There are two definitions provided.

15 THE COURT: That would be contrary to the sentencing
16 guidelines, but let's try that.

17 MR. GRADY: One is to discharge the weapon, and there
18 really can be no dispute about that. The gun is discharged.
19 That is the top level. So below that begins "otherwise used,"
20 and the question then becomes where's the bottom end of that
21 range. And the answer is where brandishing ends.

22 Nowhere -- I think contrary to what's being argued by
23 counsel -- nowhere in brandishing does it suggest in the
24 definition of the guidelines that brandishing encompasses
25 pointing a loaded weapon at an individual. What it says is the

1 general display. So imagine a gun. I have a gun. That is a
2 general display. Holding a gun in one's waistband and lifting
3 one's shirt to make the person aware of the weapon and its
4 possible use in the future, but what the First Circuit said,
5 and I'll quote from *Villar* at 586 F.3d, page 90, quote -- and I
6 would note with respect to *LaFortune*, counsel spent a
7 tremendous amount of time arguing from that. That case was
8 actually decided under a prior version of the guidelines that
9 was different than the guidelines in effect now. So -- and the
10 First Circuit notes this in *Villar*.

11 THE COURT: Is that in *Villar* an issue?

12 MR. GRADY: They're definitionally different, and I
13 don't think it's a huge issue, but I think the First Circuit
14 even recognized this in *Villar* that *LaFortune* addressed the
15 guideline that was a different guideline than the one in effect
16 at the time of *Villar*, and that is in effect now, and I think
17 that matters because I think that to the extent *LaFortune* is
18 different from *Villar*, *Villar* ought to be the one that controls
19 because that's actually addressing the guidelines that is
20 currently in effect. Quoting from *Villar* at page 90, quote,
21 "The *LaFortune* court focused on the, quote, specific leveling
22 of a weapon at another person, as opposed to a general display
23 of weaponry as the demarcation between brandishing and
24 otherwise using."

25 I don't think I can say it any better or more simply

1 than that. The First Circuit has said *LaFortune*, and in this
2 case we are focusing on the demarcation line between
3 "brandishing" and "otherwise used" being the specific leveling
4 of a weapon at another person, and that's exactly what we have
5 here. That's exactly what the government has focused its
6 argument on, and that's exactly what I think there is literally
7 no possible factual dispute regarding. If one looks at the
8 various pictures, but I'll go to Count Eight because that is
9 the -- really the -- the count that matters. What we have is a
10 picture of an individual --

11 MR. MIRHASHEM: I'm sorry. I'm just not getting that
12 on the screen.

13 MR. GRADY: I will --

14 MR. MIRHASHEM: You turned it on?

15 MR. GRADY: I did.

16 MR. MIRHASHEM: I can just come over. I mean, I have
17 the picture.

18 MR. GRADY: No, it's fine. I can get more than one
19 on.

20 THE COURT: How do you turn that on?

21 MR. MIRHASHEM: I tried pressing.

22 MR. GRADY: It always seems to come up when I'm on a
23 roll, your Honor.

24 But what we have here is a defendant -- this
25 defendant, Mr. Tufts-Raymond, holding a firearm whose -- and

1 this isn't a general display of a firearm where the pointy end
2 where the bullet comes out happens to be pointed at a person.
3 This is the specific leveling of a weapon at the teller with
4 the intent to communicate to the teller that if you do not do
5 what I want, this gun is going to be fired at you. There is no
6 other way to interpret that, your Honor.

7 One can clearly see the barrel of the firearm, and
8 drawing a line from that barrel to where the teller is
9 standing, it is clearly pointed in this direction.

10 In addition, one can see the positioning of the
11 defendant's fingers. And if that finger is not on the trigger,
12 it is on the trigger guard. It is in -- I think it's inside
13 the trigger guard. His finger is poised to fire the gun. That
14 is a specific threat to a specific individual by leveling a
15 firearm at them, your Honor. And I think there's no other way
16 to construe that photograph, and I think since this is the only
17 real material dispute in terms of the guidelines, your Honor, I
18 won't focus on the additional argument. So I would point out
19 in addition to this, the government did include a statement
20 from the victim in which the victim was asked, Can you describe
21 in as much detail what occurred today as to the attempted
22 robbery.

23 And just skipping ahead to where the red arrow points,
24 quote, he lifted up his shirt and pointed a gun at me. There
25 is no confusion in the victim's mind there. "Pointed a gun at

1 me," not generally waved it around or brandished it or made a
2 general display of some potential future threat of the use of
3 the weapon. He pointed the gun at me.

4 For those reasons, your Honor, the government believes
5 that the six-level adjustment is appropriate.

6 THE COURT: Thank you.

7 MR. MIRHASHEM: May I just respond to one point, your
8 Honor?

9 THE COURT: Of course you can.

10 MR. MIRHASHEM: Just that the government suggested
11 that the change in language from *LaFortune* makes a difference.
12 I just want to point out the First Circuit specifically held
13 that it's applying the *LaFortune* standard. As I cite in my
14 memorandum, 586 F.3d at 89, the Court noted that the definition
15 had changed. Then it said both parties in the case said the
16 same standard is still applied, and then the Court itself
17 applied the same standard. So it concluded that the change in
18 the definition did not affect the analysis, and that's right in
19 the opinion, because I mean, obviously, the definition has
20 changed. They're citing *LaFortune* so there's this issue of
21 should we be citing it or not, and so they address that in
22 their opinion. So that's addressed by the Court, and so
23 *LaFortune* and *Villar* are authority of equal weight in this
24 case.

25 I also would say that, again, the government says that

1 brandishing, you know, involves a general display. And nothing
2 in the definition says that it involves pointing at a specific
3 person. Again, "brandish" means the weapon was displayed to
4 another person in order to intimidate that person. So it's
5 not -- the distinction is not between a group of people and one
6 person. The distinction is between displaying a weapon or
7 doing more with the weapon that rises to a level that takes you
8 outside the scope of brandishing and into using it other than
9 by discharging it. And the examples of the facts in those
10 cases show you what the Court means by that. It's the --
11 it's -- it was a display to intimidate, or was it more than a
12 display to intimidate.

13 THE COURT: Well, I mean -- I think each of the three
14 categories is -- is intended to intimidate. There's no dispute
15 about that.

16 MR. MIRHASHEM: A specific person also, I mean I think
17 that's what I'm trying to emphasize, intimidate a person.

18 MR. GRADY: That's not disputed, your Honor.

19 THE COURT: Yeah, I agree.

20 MR. GRADY: The difference --

21 THE COURT: So if the question is the act of pointing
22 the gun, and I mean pointing the gun. Even though it's
23 resting, it's being pointed. I mean I think that -- I mean I
24 respectfully disagree with you on this. You know, as always,
25 you've done a terrific job on this issue, and I've spent a lot

1 of time today working on this, but I just don't agree with you.
2 I think it was otherwise used. I -- I agree with the
3 government that it was deliberately pointed, and it was
4 intended beyond the "brandishment" definition.

5 MR. MIRHASHEM: I understand, your Honor.

6 THE COURT: All right. Okay. So that would
7 make -- that would make the guideline provisions 135 to 168
8 months; supervised release two to five years; probation,
9 ineligible; fine range, 15,000 to 150; a restitution number of
10 \$10,113.27; and a special assessment of \$900. I also show the
11 defendant in a Criminal History Category IV.

12 All right. So Mr. -- actually, Mr. Grady, let me hear
13 you first.

14 MS. ROBERTS: I just want to clarify that the range is
15 135 to 168 on Counts One through Eight; but Count Nine carries
16 the 84 month consecutive.

17 THE COURT: Oh, right. Thank you. Thank you. It's
18 right here in front of me. Thank you for that.

19 Mr. Grady, let me hear from you first.

20 MR. GRADY: Thank you, your Honor.

21 MR. MIRHASHEM: "Consecutive," is that what he said?

22 THE COURT: Yes, 84 months.

23 MS. ROBERTS: Yeah, 84 months.

24 MR. MIRHASHEM: 84, sorry.

25 MR. GRADY: Your Honor, I think though the Court has

1 read the PSR, merely reading it is a bit dry, and I would like
2 to go through the facts a little bit with some exhibits
3 outlining how these events occurred.

4 We are before the Court because this defendant over a
5 five-week period in October and November of 2013 essentially
6 engaged in a one person crime spree and committed eight armed
7 robberies of five grocery stores, two banks, and a jewelry
8 store beginning on October 30th.

9 On that day the defendant walked into the Price
10 Chopper supermarket in Worcester. He approached the customer
11 service desk, as can be seen in Exhibit 3, asked for a plastic
12 bag and were told that they didn't have any. The defendant
13 pulled the gun, pointed it at her as one can see from the two
14 photos, and again these are -- if one traces the line of where
15 the gun is pointed, it's directly at the teller. Again, that
16 would be the basis for the government's contention the gun was
17 otherwise used and is charged as being material stating "give
18 me all the large bills, 100s, 50s and 20s," and he fled the
19 store with approximately \$1,200.

20 Moving on to Count Two, on October 31st, the very next
21 day, at approximately 6:30 p.m., the defendant entered the
22 Stop & Shop on West Boylston Street in Worcester. He
23 approached the customer service desk and told the victim he
24 needed a money transfer. The defendant returned to the desk,
25 acted like he was going to fill out that form. Before he again

1 pulled the gun from his waistband and demanded the victim put
2 all the fucking money in the bag right now. The victim emptied
3 two registers into a bag, a total of approximately \$1,700. And
4 again the victim within an hour gave a recorded statement to
5 the police as noted in Exhibit 4 of the government's sentencing
6 memorandum in which the victim stated he pulled it out,
7 referring to the gun, and steadied it on the counter aimed at
8 me.

9 Count Three. On November 3rd, the defendant went
10 into -- this is now three days later. So now over the course
11 of four days, we have three armed robberies, your Honor.
12 Tufts-Raymond entered the Shaw's Supermarket on Stafford
13 Street, entered again, went to the customer service desk,
14 pulled a gun from his waistband, racked the slide, and demanded
15 money. And for this one, your Honor, this is a relatively
16 short video.

17 (Whereupon, the video was played.)

18 MR. GRADY: There are two angles. What the Court is
19 seeing now is a side angle. And we'll see the defendant
20 wearing a red sweatshirt enter from the left. At this point,
21 he's pulling the weapon.

22 For this video, I'm going to play for a few moments
23 further. I think that one can -- though you can't hear it, one
24 can see the -- the victim's reaction, if one watches a few more
25 minutes. Then it stops.

1 I'm just going to show the Court a second video from
2 the front now facing the defendant.

3 (Whereupon, the video was played.)

4 MR. GRADY: We can clearly see the defendant
5 chambering a round in the weapon, preparing it to fire.

6 (Whereupon, the video was played.)

7 THE COURT: Mr. Grady, I forgot from the PSR, what was
8 the caliber of the gun that was recovered?

9 MR. GRADY: It was a Glock, your Honor, a .45 caliber.

10 THE COURT: Thank you.

11 MR. GRADY: I am going to make sure of that,
12 but -- yes, .45 caliber Glock handgun, your Honor.

13 So I don't think I need to say much more about the
14 November 3rd robbery. I will say, your Honor, that having
15 reviewed this, you know, I really -- I watched this in an
16 attempt to sort of capture the same type of images in terms of
17 the gun. So I watched both of these video extensively, and I,
18 you know, really tried to focus on where the gun was pointed.
19 This is one in which the government had succeeded in convincing
20 probation that the gun had been pointed at the victim. I
21 couldn't find it here when I went through the videos, and I
22 ultimately concluded though it again doesn't have a practical
23 consequence, but for this the government is not objecting to
24 the five-level enhancement. But having done that it
25 illustrated a point for me, which I would bring to the Court's

1 attention now is just part of the government's argument that as
2 useful as the sentencing guidelines are, and I don't think the
3 Court succumbed to this, but I think the Court in and just
4 discussing the issues regardless of how this is used, this is a
5 horrific experience for these victims that -- I watched these
6 over and over looking at whether the gun was pointed at the
7 victim. And what I wasn't focusing on was the fact that the
8 defendant went into this victim's place of work, pulled a gun
9 out of his waistband, racked the slide in the victim's face and
10 demanded money, and it makes not one bit of difference whether
11 that counts as plus five or plus six under the guidelines in
12 terms of that victim.

13 So moving on to November 9th, the defendant committed
14 another armed robbery at the Shaw's Supermarket on West
15 Boylston Street.

16 Excuse me. And again the defendant entered, went to
17 the customer service desk, pulled the gun from his waistband,
18 pointed it at the clerk and demanded that she give him all of
19 the money.

20 As the Court can see from Exhibit 5, again, this is
21 not a situation where the gun was merely waved around in some
22 sort of general threat. This weapon was specifically leveled
23 at the young woman behind the desk.

24 (Whereupon, the video was played.)

25 MR. GRADY: Just over a week later, the defendant

1 committed an armed robbery of the Gold Buyer's Jewelry Store on
2 Grafton Street in Worcester, your Honor. The defendant was
3 buzzed in. He engaged in some small talk with the employee
4 behind the counter. This was not in a business that had
5 working video cameras, your Honor. So all we have is the word
6 of the victim. But the victim related that the defendant came
7 in and engaged in small talk, then pulled a handgun, racked the
8 slide in the victim's face, and demanded the money.

9 And as he walked out -- sorry. What we're looking at
10 here actually in Exhibit 6 on the screen is the young woman
11 from the prior robbery.

12 Exhibit 7 is the Worcester P.D. report in which the
13 responding officer having spoken to the victim says, quote, the
14 victim said that the male pointed the gun at his face and told
15 him, quote, to give -- give him the money, and I don't want you
16 to watch me. In addition to that statement to the police, upon
17 immediately responding again within approximately an hour of
18 the robbery, the victim gave a recorded statement to police in
19 which he stated that the defendant cocked the gun, and then
20 after getting the money from the victim walked backward towards
21 the door facing me with the gun pointed at me.

22 So again, though it is not material, it's the
23 government's position that the six-level enhancement is
24 appropriate.

25 On November 25th and then November 26th -- excuse me.

1 November 20th, your Honor, there was actually -- there was a
2 second robbery after the jewelry store. The defendant then
3 went that same day, robbed a Citizens Bank, which was located
4 in a -- the supermarket at the Boston Turnpike in Shrewsbury,
5 and again we have the defendant pulling a firearm -- there's
6 really no question it's the defendant, as one can -- a
7 surveillance photo from the Citizens is particularly good, your
8 Honor.

9 This is the count that underlies both Count Six and
10 the charge of the use of a firearm in the course of a felony,
11 Count Nine, your Honor.

12 On November 25th, we have two more robberies, the
13 first at a Stop & Shop in Sturbridge, and again we have -- I
14 have just provided the Court with some surveillance. Again,
15 you can see the defendant. This is one in which probation
16 concluded, and I think the government at this point concurs,
17 that the weapon was not specifically pointed at the victim but
18 was instead merely displayed.

19 (Whereupon, the video was played.)

20 MR. GRADY: And finally, we have the robbery or the
21 attempted robbery of the Worcester Credit Union on the
22 afternoon of November 25th, your Honor. The defendant went in,
23 and this robbery really just didn't go according to plan. The
24 defendant went in, pointed the gun at the teller, and the
25 teller reacted by simply falling to the ground, which is in

1 essence or essentially deprived the defendant of the ability to
2 threaten the victim. It either was just incredibly smart or
3 incredibly lucky, but once the victim fell down, essentially
4 Mr. Raymond backed away from the counter. He was actually
5 approached by a manager who asked what he was doing, and Mr.
6 Raymond turned to the manager and said, "I'm robbing you" but
7 at that point simply exited the bank.

8 And again there's really no question about the
9 identity of the defendant here, your Honor.

10 I would come back a little bit about the facts in the
11 robbery of the Sturbridge bank -- excuse me -- the Stop & Shop
12 that occurred -- that occurred in Sturbridge. That's right. I
13 do want to commend one witness actually followed this defendant
14 outside and got a partial plate, four digits of it, which were
15 relayed to police. And on the 26th, the day after the two
16 robberies in Count Seven and Eight, an officer of the Spencer
17 Police Department observed three individuals getting into a car
18 that matched the description of the car and which matched the
19 description of the plate. That officer called for backup and
20 initiated a stop. The car fled. When he was able to stop the
21 car there was only one of the three individuals in the car, an
22 individual by the name of Mr. Krystian Gubernat. Mr. Gubernat
23 has been charged federally by a criminal complaint. I would
24 anticipate his case to be similarly resolved, but it is not yet
25 at that stage, your Honor.

1 THE COURT: Where is that?

2 MR. GRADY: He is charged by way of criminal complaint
3 with two counts of bank robbery, two counts of use of a firearm
4 in the course of a felony. His counsel and I have been in
5 discussions about a plea. We're 99 percent the way there. I
6 think truthfully what is holding that up at this point, I
7 think, Mr. Gubernat would like to see what sentence is imposed
8 in this court -- excuse me -- in this case.

9 Mr. Gubernat's role, he gave a confession, and I have
10 no evidence to the contrary was merely that he was the driver;
11 and, in fact, he confessed that he drove Mr. Tufts-Raymond to
12 and from the robberies. And I think in one instance actually
13 he and his girlfriend did so. But that gets a little bit
14 aside.

15 So at this point, when the officer stops the car with
16 only the single individual in it, officers were aware that this
17 is an individual who had committed eight robberies; and what
18 results essentially, your Honor, is what has been described as
19 a massive manhunt in downtown Spencer. Obviously, it involved
20 a helicopter. It involved canine units. It involved state and
21 local police, dozens of officers. Officers in that situation
22 are not bringing along a photographer, but the Worcester
23 Telegram did, in fact, come out there and took some photos,
24 your Honor, and I've included some of those photos for the
25 Court's review. There are eight photos of the downtown Spencer

1 area. One can see the helicopter, troopers confronting
2 individuals, troopers armed with assault rifles, multiple
3 police cars in the downtown area. It doesn't convey the
4 entirety of the resulting search or how very deadly seriously
5 the police took this conduct, but I think it conveys a portion
6 of what occurred that day, your Honor.

7 So, in this case, your Honor, we have a plea agreement
8 pursuant to (c)(1)(B). The Court is capable of imposing any
9 sentence, but the government's recommendation here is a
10 sentence of 180 months. That consists of a sentence of 96
11 months on Counts One through Eight, your Honor, to be served
12 concurrently. And as to Count Nine, which is the 924(c)
13 offense, your Honor, the mandatory minimum, a sentence of 84
14 months to run consecutively to those counts to the sentence
15 imposed on Counts One through Eight; a fine within the
16 guideline range, unless the Court determines the defendant is
17 unable to pay; a sentence of 60 months of supervised release,
18 which would consist of a sentence of 60 months on Count Nine
19 and a sentence of 36 months of supervised release on Counts One
20 through Eight to run concurrently; a special assessment of
21 \$900. Restitution is set forth in paragraph 143 of the PSR,
22 and forfeiture is set forth in paragraph nine of the plea
23 agreement. There is a motion for final forfeiture pending at
24 Docket No. 46, your Honor.

25 Now, that aside, your Honor, I think the facts speak

1 for themselves a great deal in terms of some of the factors
2 under 3553(a), but just for clarity purposes, as the Court
3 found, we have a total offense level of 30, his criminal
4 history of four, which gives a guideline range of 135 to 168
5 months on Counts One through Eight, to which the 84-month
6 mandatory minimum must be added for a guideline range of 219 to
7 252 months. So I'll begin by saying the government's
8 recommendation is below guidelines.

9 I -- the conduct here is incredibly serious, but the
10 government's recommendation does take into account that the
11 defendant has pled guilty before an indictment, has spared all
12 of the victims at trial, and has taken into account in essence
13 much of what the defendant conveys is mitigating circumstances,
14 such as his drug use for the motivation for the crime.

15 And I -- I mentioned to the Court already in terms of
16 discussing the guidelines how it is that sometimes they can
17 cause one to lose the forest through the trees, at least it did
18 for me a little bit, but these were horrific crimes, and I
19 think all the more so because this defendant it's not his first
20 armed robbery. In fact, this defendant has a history of both
21 weapons possession and violent felonies beginning in 2006. We
22 have what was essentially a conviction for disorderly conduct,
23 but when one looks a little bit deeper and looks at the facts
24 of that from the PSR, we see that he was found in possession at
25 the time of at double-bladed knife.

1 2007, we have a theft from a jewelry store where the
2 defendant goes in and simply grabs jewelry and runs out.

3 2008, the defendant's convicted of firearm possession,
4 of a .22 caliber revolver. He is given probation and violates
5 and serves a year.

6 Then in a year in 2009 he's convicted of assault and
7 battery, and he's convicted -- he's given 18 months, though I
8 will say later in that same year he commits an armed robbery
9 with a knife, and that 18-month sentence I previously mentioned
10 is imposed concurrently with the two-year sentence he received
11 for the armed robbery.

12 And yet clearly his conduct continues. So,
13 essentially, he has a pattern of escalating conduct. You go
14 from disorderly to essentially unarmed robbery, to possession
15 of a firearm, to assault and battery, and to armed robbery.
16 And then we have an exponential in this case, your Honor, we
17 have eight armed robberies over a five-week period.

18 Looking then at the defendant's history and background
19 and the nature and circumstances of the offense, the government
20 suggests its recommendation of a 15-year sentence is not
21 entirely appropriate. The defendant's history shows an
22 individual of escalating aggression and escalating danger. The
23 defendant's conduct in this case is of the worse kind short of
24 murder. The defendant essentially on eight separate occasions
25 set up a situation in which, you know, one bad choice by one

1 individual and the defendant would be charged with murder. One
2 witness deciding to intervene or one individual behind a
3 counter deciding to grab for the gun, any of those things were
4 possible, and the defendant was perfectly willing to take those
5 risks.

6 So in terms of considering the seriousness of the
7 offense, and to provide for just punishment for the offense,
8 the government suggests the recommendation should be imposed.
9 Further, it would serve to deter this defendant, who in the
10 past has been arrested, has been convicted, has been
11 incarcerated, but whose behavior continues to escalate.

12 Further, while the Court should consider the
13 defendant's educational training and need for treatment, I
14 think the -- the defendant clearly has had the opportunity for
15 treatment before. In fact, he has engaged in such treatment
16 before based on the letters you have before you, but each time
17 what we have is not a diminishment of his criminal conduct, but
18 an escalation.

19 Now, Judge, I don't have the sentencing transcripts
20 for his prior cases, but all we have today, to say this will be
21 any different is that his -- this time he's ready to commit,
22 but I would bet, and I don't have the transcripts, but I would
23 bet that exact same story has been told before when this
24 defendant was sentenced previously. So we have a defendant
25 with prior weapons and armed robbery charges, incredibly

1 serious, potentially deadly conduct in this case, extraordinary
2 disregard for human life and the safety and the injuries to
3 others. All of these factors, the government suggests
4 militates for the sentence of 180 months.

5 Even if we assume the defendant's narcotics addiction
6 contributes to these offenses, your Honor, this is not a
7 defendant who backslides and loses his job. This is a
8 defendant who backslides and gets worse. Treatment is not,
9 based on this defendant's history, going to alleviate the
10 problem.

11 THE COURT: Did I -- did I read that the -- and I
12 think I did that the -- the weapon had hollow point bullets?

13 MR. GRADY: Yes, your Honor, if we're looking -- a
14 picture of the gun and the bullets are Government Exhibit 2 in
15 the sentencing memorandum.

16 THE COURT: Thank you.

17 MR. GRADY: I'll just note a couple of things. I'm
18 largely done, your Honor. A couple of things from the
19 defendant's sentencing memorandum. The defendant cites to two
20 cases in which defendants who were convicted of single counts
21 of bank robbery and single charges of 924(c) violations were
22 given, I think, respectively 14 years and ten-year sentences,
23 or something in that range. You know, I actually pulled three
24 or four cases where defendants who committed one armed robbery
25 got 210 months. I didn't find that to be particularly

1 persuasive, but if the Court does find it persuasive --

2 MR. MIRHASHEM: I haven't been objecting, but I think
3 if the government is going to cite particular cases with
4 particular sentences, I need to have advance notice of that to
5 be able to respond to that case. I mean I filed my memo with
6 the names of the cases. I -- I certainly am not questioning --

7 MR. GRADY: No. No.

8 MR. MIRHASHEM: -- Attorney Grady, but I'm not capable
9 of responding to I pulled a case where such and such a sentence
10 was imposed, your Honor.

11 MR. GRADY: And that's sort of the government's point.
12 It's sort of kind of what I'm getting at, your Honor, that
13 picking these cases out of the blue and saying the
14 government -- you know, this case had 14 years. Well, this
15 Court doesn't know anything about, you know, how the government
16 reached its recommendation, what the strength of the
17 government's case was, whether some negotiated plea was
18 reached, or some agreement was reached because there was issues
19 of suppression. Looking at other cases in isolation with
20 whatever facts the defendant chooses to put before the Court
21 isn't all that helpful, but if the Court feels that that's
22 somehow compelling, I have a number of cases in which
23 defendants who have engaged in less serious conduct have
24 received larger sentences, but I would suggest it really
25 shouldn't be persuasive.

1 And to the extent it matters, that would be cases such
2 as *United States versus Cannon*. That was a three-armed
3 robbery, three charges of armed robbery with no firearm charge,
4 your Honor. The defendant received a 210-month sentence from
5 Judge Woodlock, Docket No. 11CR10335. I could go on. I
6 just -- I don't think it's that persuasive to look at these
7 other cases and try to drop parallels here, your Honor.

8 In terms of the need to provide restitution, I think,
9 your Honor, Probation has adequately set that forth in the PSR,
10 unless the Court is contemplating issuing something different,
11 the government would ask the Court to impose a sentence of
12 180 months as the government described it both earlier in its
13 argument and in its plea agreement.

14 THE COURT: Thank you.

15 MR. GRADY: Thank you.

16 THE COURT: Attorney Mirhashem.

17 MR. MIRHASHEM: Thank you, your Honor. Your Honor,
18 there's no dispute that these were very, very serious offenses,
19 and the Court is going to impose a very, very severe sentence
20 in this case. I mean he's an a 26-year-old young man. He
21 served a one-year sentence and a two-year sentence. If you
22 impose the eight years that we're asking for, that's four times
23 greater than the longest sentence that he has served. If you
24 ask -- if you impose the 15 years that the government is asking
25 for it's more than seven times the longest sentence he has ever

1 served. And so I do think that it's important to consider this
2 case in the context of other cases to avoid unwarranted
3 disparities.

4 Now one way I think the Court can certainly do that
5 is, you know, you're an experienced judge in state court, in
6 federal court certainly. You're going to be weighing this case
7 relative to other cases that you've experienced. And I agree.
8 I tried -- the sentencing statistics that are put out can't
9 capture the specific facts of cases in a way that allows
10 meaningful comparison of this case to a large number of other
11 cases. I think it's different when you're talking about
12 possession of a certain amount of cocaine with intent to
13 distribute. I mean, here it's harder.

14 I do think though that to avoid unwarranted
15 disparities, you need some markers, and one of the points of
16 the guidelines was to provide markers and avoid unwarranted
17 disparities, obviously. But the guidelines, the Supreme Court
18 has said, are even presumptively reasonable in this case. You
19 have to make an individualized determination under 3553(a), and
20 so I suggest that, you know, I put some effort into finding
21 these two cases. I'm not suggesting that this was random on my
22 part, but I did make an attempt to find out about the facts of
23 the cases and the defendant's record.

24 Now, the government is correct. I mean I don't know
25 what was discussed in the plea negotiations and stuff like

1 that. That I do not know, but I do maintain that these two
2 cases provide helpful markers. One of them is the *LePage* case.
3 So the conduct in that case is Mr. *LePage* walked into a bank,
4 grabbed a customer, stuck a gun to the back of the customer's
5 head. He demanded that the customer hand over money, then
6 pointed the gun at the tellers and ordered them to put money in
7 the bag he was holding. And he left with about \$22,000. His
8 record, I know, he's 48. He had a criminal record spanning 33
9 years that included a conviction for murder where he got 18 to
10 20 years; armed robbery where he got a concurrent 21 to 22
11 years; a separate assault to kill where he got a separate five
12 to ten years; and a separate armed robbery where he got a
13 separate five to 10 years. Mr. *LePage* was subject to a seven
14 year mandatory sentence for brandishing. And the parties
15 agreed on a 16-year recommendation with Judge Stearns, not a
16 judge known for being particularly lenient, he adopted. So 16
17 years for somebody who already had a murder conviction and two
18 prior armed robberies, five to ten cases.

19 The other one is the Hamilton case, which I cited
20 which is Judge Zobel's case. The defendant robbed a Citizens
21 Bank by passing a note to the clerk. As he's leaving the bank
22 he -- I note that he has a gun. As he's leaving the bank he
23 gets trapped inside the bank. He pulls out his gun and
24 actually discharges it five times as he's yelling, and that
25 causes the bank employees to open the door so he can get out.

1 He was a career offender. So his guideline range was 308 to
2 355 months, including the 10 year mandatory for a discharge.
3 And he got a total of 14 years, a total 10 plus four.

4 I do think that these are two cases where the conduct
5 was worse. The record was much worse.

6 Now, what you have in this case, which you didn't have
7 in those cases is the crime spree. You have over -- about a
8 three-week period eight of these incidents, and I agree that
9 that's something that gets factored on the other side. I mean
10 I think if he had done one of these, I think he clearly would
11 have been appropriate for a substantially shorter sentence.
12 But he did eight of them, and that is more serious, but I just
13 ask the Court to consider that -- I mean again, you're an
14 experienced judge. You have seen a lot of cases where somebody
15 who is feeding a drug habit goes on a crime spree; and whether
16 they get arrested after the first one, second one, fifth one,
17 or 50th one, whether it's shoplifting -- I mean we have all
18 seen so many cases of drug addicts who shoplift. You can hit
19 three supermarkets or 30 of them. It's a matter of
20 happenstance how many you do because you know what you're doing
21 is you're going to commit the crime, use the money, the next
22 day you need more money to feed your habit. And so the eight
23 is a significant factor for the Court, but I do think that even
24 with eight when you compare it with, you know, a die-hard
25 criminal, who has served a murder sentence, two prior armed

1 robbery sentences, points a gun in the back of the head of a
2 customer that he has grabbed, if that person gets 16, then this
3 person deserves less than the 15 that the government is asking
4 for.

5 Now, the other point that I want to make sort of
6 generally is I've cited at the beginning of my memorandum, I
7 think it's important for the Court to recognize that you have
8 to fashion an overall sentence that's appropriate in this case.
9 You -- it shouldn't be, well, he is getting seven years for the
10 gun count. Well, I'm not going to give him just one year for
11 the robbery. I've cited a Fifth Circuit case that makes it
12 very clear that, you know, in the fraud context, Congress has
13 said you get a two year consecutive sentence to the underlying
14 fraud for identity theft and instruct the judges not to
15 consider those two years in deciding a sentence for the
16 underlying offense. That's not the case here. The entire
17 sentence that you impose has to be an appropriate one whether
18 it's 15, or eight, or somewhere in between, and that I think is
19 a very --

20 THE COURT: I'm wrestling with that. I agree with
21 you. That is a problem because -- well --

22 MR. MIRHASHEM: And you know, I think the reason it's
23 a problem is I mean, frankly, I don't agree with it, but you
24 know, I'm obviously -- they don't listen to me. Congress has
25 made a decision here how much power to vest in federal

1 prosecutors, and one of the reasons for the enormous explosion
2 of, you know, incarceration length and numbers over the past 30
3 years from 200,000 in the 1970s to 2 million in the 2000s is
4 state legislation has also followed and invented enormous
5 discretion in prosecutors in terms of the definition of
6 offenses and specifically minimum mandatory sentences. I very
7 much appreciate that Attorney Grady in this case, you know,
8 charged one count. He could have charged two counts, and then
9 it would have been a minimum mandatory 25 years.

10 MR. GRADY: Thirty-two.

11 MR. MIRHASHEM: Thirty-two. But that's a decision
12 that Congress made to give him the discretion to decide whether
13 to force you to put this man away for life or not.

14 THE COURT: And this is a lot more academic than
15 practical what I'm about to say, but following that line of
16 reasoning I would -- I should start with the sentence of
17 168 months because it's 84 and 84. I mean isn't that what
18 you're saying?

19 I mean the seven years is there so in order to make
20 the sentencing -- the sentences not disparate, he should be
21 getting at least that much on the front end. I mean that
22 doesn't work.

23 MR. MIRHASHEM: No, no, he -- Congress has said that
24 he can't get less than seven.

25 THE COURT: Right.

1 MR. MIRHASHEM: Congress has also said in 3553(a) that
2 you've got to come up with a total sentence of at least seven
3 that is appropriate for the entire conduct in this case. Eight
4 robberies that involved firearms, what's the right sentence in
5 your judgment, except that you can't give him less than seven?
6 I think that that is what I'm saying that you've got to give
7 him at least seven, but what you shouldn't do is say, okay, I'm
8 going to put the seven aside and decide, you know, how much to
9 give him for the robberies. You have a 24-year-old individual
10 before you. He has done a one-year sentence and a two-year
11 sentence. And one consideration, for example, the specific
12 deterrence. You, I'm sure, want to make sure this person
13 doesn't do this again. He has got to get a big enough sentence
14 that he gets the message not to do it again, and for that I
15 suggest -- this is where it makes a difference. I mean you
16 give him eight years. He's 24 with a six-year-old daughter,
17 and very close to a grandmother who is very elderly. I mean
18 putting him away for eight years is not going to give him the
19 message of, oh, you know, why don't you just go out and rob
20 more banks because all you got is eight years. He is going to
21 spend the prime of his life in prison, away from his
22 grandmother, away from his parents, away from his daughter.
23 And so that's a sufficiently severe sentence.

24 The other factor that I've brought out in my
25 memorandum and I ask the Court to consider is his history and

1 characteristics. I mean, frankly, in all honesty, I don't know
2 how judges do their job because I always struggle with -- I
3 mean, clearly he's coming to this Court and pled guilty so the
4 law holds him responsible for his conduct despite the fact that
5 I know that if my child had this kind of upbringing it's quite
6 likely that he would do it. I mean it really raises some
7 important questions about free will and choice; and if you're
8 in the mental hospital when you're six years old and, you know,
9 the GAL has interviewed you five times about cross allegations
10 that your parents are making and you're addicted to drugs by
11 the time you're 15, and you're using every day by the time
12 you're 20, I mean at least you don't get a free pass on that.
13 That's very clear. But Congress has set out these factors, and
14 the first one includes the history and characteristics of the
15 defendant, and a lot of this fighting over what weight to give
16 the guidelines was about a commission that basically was
17 saying, oh, don't look at these factors, just look at the
18 numbers which -- as Attorney Grady described don't capture the
19 facts of the case, don't capture the background of the
20 defendant. Well, now the Supreme Court has said, you can't do
21 that. You should consider in this case, you know, what
22 happened to this person when he was three. You should consider
23 what happened to him when he was six or seven and somehow weigh
24 that in; and as I understand it, the way that it comes in is
25 you can't go easy on specific deterrence because he had a

1 difficult childhood because you have to make sure he doesn't do
2 this again. You can't go easy on general deterrence because he
3 had a difficult childhood because everybody else out there has
4 got to get the message not to do this. But you can go easy, I
5 think, in a big part of sentencing which however -- whatever
6 language you use, I mean I could just tell from your reaction
7 to the images in this case you want to say you have engaged in
8 some really wrongful conduct, and for that you deserve to be
9 punished. And I think it's when you consider this matter of
10 just deserved, how much does someone deserve as punishment?

11 There, I think, you do have to look closely at the
12 human being that is before you. I mean the guy who had all the
13 privileges and had a wonderful two-parent family and went to
14 the private school and went to Harvard, and then went out and
15 in a -- you know, a moment of anger driven by, like,
16 selfishness, or whatever, hurt somebody. Well, that's
17 different from the person who struggled from like infancy
18 basically.

19 And you have before you someone who has struggled
20 literally since infancy, and the trauma and hurt that he
21 experienced caused him to become addicted to drugs, and that
22 addiction caused him to engage in this conduct. And so those
23 things, I do ask you to consider, but I also understand that
24 while you've got to protect the public so you can't just go by
25 that. So what are this person's prospects? And the letters

1 that I've enclosed from his treatment providers, I think, show
2 that this is an individual who has excellent prospects if he
3 can deal with his addiction issue, and the letters show that in
4 the past he has really succeeded for not lengthy periods of
5 time, brief periods of time. But I was frankly, you know, very
6 pleasantly surprised by these letters. I mean these are people
7 who deal with people like Jonathan every day, and, you know,
8 when you have the lead case manager at Star saying over the
9 past three years I have watched Jonathan fight his way back
10 from seemingly insurmountable odds and time and time again
11 display constant vigilance and great fortitude. He has been
12 able to secure employment, addresses most pressing issues, and
13 tries to become a productive member of society.

14 You have the YARCAM program talking about how he was
15 fully engaged in his addiction and mental health treatment, how
16 he worked hard at having reconciliation goals. I mean I think
17 this is someone who treatment providers saw some promise in,
18 and that is a factor to also consider in deciding just how long
19 do you need to lock him up to protect society.

20 And I just -- I mean I just hope I can convey to you
21 that, you know, eight years is a very long time for someone
22 like this who has a six-year-old, an elderly grandmother, has
23 never been incarcerated for more than two years. Eight years
24 is a very long time, and it is a fair and just sentence in this
25 case, your Honor.

1 And if you permit him, Jonathan would like to make a
2 statement as well.

3 THE COURT: Thank you. Thank you.

4 Would you like to address me before I impose sentence
5 on you, Mr. Tufts-Raymond?

6 THE DEFENDANT: Yes, Judge.

7 THE COURT: Please do.

8 THE DEFENDANT: Please. I want to just thank you for
9 letting me speak. I want to take this opportunity to apologize
10 to the Court, who must decide my punishment, the victims of my
11 crimes in this case, and also my family.

12 Your Honor, when I think of the fear that I caused the
13 victims in this case, they experienced from my selfish acts,
14 I'm completely ashamed of myself. I would like nothing more
15 than to go back and take back my actions.

16 I'm so sorry that these hard-working people suffered
17 from my disgusting behavior, and as I stand here before you
18 sober and a stable state of mind, it makes me sick to my
19 stomach to see what these people went through on my behalf.

20 I'm barely able to put in words how genuinely sorry I
21 am for these victims in this case. Although the monetary
22 victims are the institutions named, the true victims are the
23 people that I put in fear and traumatized, and I pray that they
24 can heal.

25 I'm not an actually evil person, Judge. I'm a -- for

1 a long time in my life I've struggled with substance abuse
2 problems and the disease of addiction, and I want to just point
3 out that this is in no way an excuse for my behavior. I'm just
4 trying to alert the Court to my state of mind during the
5 commission of these crimes.

6 I would also like to apologize to my family. My
7 selfish acts have not only taken my freedom away, but I've
8 taken away from them a son, a grandson, and most tragically a
9 father to my daughter. She deserves a good father, and I have
10 taken that from her as well.

11 Your Honor, I can't -- I'm the only one that can fix
12 myself. I'm responsible for my own recovery. I know it starts
13 with me. And my failed attempts in the past have shown me that
14 I need to do something greater and something more important.
15 And I know I am eligible for the RDAP Program, which
16 specializes in helping addicts conquer their addiction to drugs
17 and alcohol. And I will complete the RDAP Program, and with
18 help from my family, I'll have a strong recovery-based network
19 in place for when I'm released.

20 I want to thank you again for letting me speak.

21 THE COURT: Thank you. Well done.

22 THE DEFENDANT: Thank you.

23 THE COURT: And I want to thank both lawyers. It's
24 not often that I get to say this. You guys were both
25 informative and eloquent, and it was appreciated.

1 All right. Mr. Tufts-Raymond, if you could stand up,
2 please.

3 In considering what a reasonable sentence would be
4 here, I must consider and have considered the advisory
5 sentencing guidelines, the nature and circumstances of your
6 crimes, your personal and criminal history and characteristics
7 and the need for the sentence to reflect the seriousness of the
8 offense, to promote respect for the law, and to provide just
9 punishment and adequate deterrence.

10 So pursuant to the Sentencing Reform Act of 1984, and
11 having considered the sentencing factors enumerated in
12 18 United States Code, Section 3553(a), it is the judgment of
13 the Court that the defendant, Jonathan Tufts-Raymond, is hereby
14 committed to the custody of the bureau of imprison -- Bureau of
15 Prisons to be imprisoned for a term of 135 months.

16 That terms shall consist of terms of 51 months on
17 Counts One through Eight to be served concurrently, and a term
18 of 84 months on Count Nine to be served consecutively to the
19 terms imposed on Counts One through Eight.

20 I'm recommending participation in the Bureau of
21 Prisons Residential Drug Abuse Program due to your substance
22 abuse history and based on the informal screening performed by
23 the probation office.

24 Upon release from prison, you shall be placed on
25 supervised release for a term of three years. That term shall

1 consist of three years on Counts One through Five and
2 terms -- and three years on Counts Six, Eight, and Nine to run
3 concurrently. Within 72 hours of release from the Bureau of
4 Prisons, you shall report to the district in which you are
5 released.

6 In addition, you shall make restitution in the amounts
7 as indicated by the United States Attorney's Office, and any
8 payment that is not paid in full shall be divided
9 proportionally among the parties named. Restitution shall be
10 paid by the defendant jointly and severally with any other
11 person convicted in the instant offense who is and may be
12 ordered to pay restitution.

13 In addition to the mandatory terms of condition, you
14 are prohibited from possessing a firearm, destructive device,
15 or other dangerous weapon. You are to pay the balance of
16 restitution according to a court ordered payment schedule. I
17 am not imposing a fine, as I find you have no present ability
18 to pay such. You are prohibited from incurring new credit
19 charges or opening addition lines of credit without the
20 approval of the Probation office. You are to provide the
21 Probation office access to any requested financial information,
22 which may be shared with the financial litigation unit of the
23 United States Attorney's Office.

24 You are to participate in a program for substance
25 abuse counseling as directed by the Probation office. You are

1 to participate in mental health treatment as directed by
2 Probation as well.

3 It is further ordered you shall pay to the United
4 States a special assessment of \$900, which shall be due and
5 payable immediately.

6 Assuming that your -- any appellate rights that you
7 have survive your appeal waiver, you also have a right to
8 appeal your sentence, particularly if you think it was contrary
9 to law. If you are unable to pay the costs of appeal, you may
10 ask permission to have those costs waived and appeal without
11 paying.

12 You must file any notice of appeal within 14 days
13 after the entry of judgment; and if you request, the clerk
14 may -- will immediately prepare and file a notice of appeal on
15 your behalf.

16 Mr. Grady, anything further?

17 MR. GRADY: I would just have the Court direct that it
18 would order forfeiture of the firearm and ammunition.

19 THE COURT: Yes. So ordered. Thank you.

20 Mr. Mirhashem, anything further?

21 MR. MIRHASHEM: No, your Honor.

22 THE COURT: Good luck to you, sir.

23 THE DEFENDANT: Thank you, your Honor.

24 THE COURT: Make this work.

25 THE DEFENDANT: Thank you, your Honor.

1 THE COURT: All right. We're in recess.

2 (At 4:46 p.m., Court was adjourned.)

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C E R T I F I C A T E

I, Marianne Kusa-Ryll, RDR, CRR, do hereby
certify that the foregoing transcript is a true and accurate
transcription of my stenographic notes before the Honorable
Timothy S. Hillman, to the best of my skill, knowledge, and
ability.

/s/ Marianne Kusa-Ryll3/26/15

Marianne Kusa-Ryll, RDR, CRR

Date

Official Court Reporter